

REMARKS

Applicant would like to thank the Examiner for allowing claims 24 and 25. Claims 1-3, 5, 8, and 24-36 are currently pending. Claims 4, 6-7, and 9-23 have been canceled. Claims 30-36 are new and find support in original claims 1-3, 5, and 8, paragraph twelve of the specification as filed, and figure 4.

The Examiner has rejected claims 1-3, 5, 8, and 26-27 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2003/0065333 to DeMayo. The Examiner argues that Demayo discloses a bone or cartilage implant delivery device having all of the elements of claims 1 and 26.

Applicants respectfully disagree. Specifically, Demayo does not disclose a delivery device having an inner shaft and an outer shaft wherein the entire inner shaft is configured to fit within the internal bore of the outer shaft. The carrier cylinder 12 of Demayo, which the Examiner equates to Applicants' inner shaft, includes a flange 19 located at an end of the carrier cylinder. When the carrier cylinder is disposed within the outer cylinder 11, which the Examiner equates to Applicants' outer shaft, the flange prevents the entire carrier cylinder from fitting within the thru-hole¹⁵ of the outer shaft, which the Examiner equates to Applicants' internal bore. Therefore, the entire carrier cylinder is not configured to fit within the thru-hole of the outer shaft, and Demayo does not anticipate claims 1 and 26. Since claims 2-3, 5, 8, and 27 depend either directly or indirectly from amended claims 1 and 26, claims 2-3, 5, 8 and 27 are not anticipated by Demayo either. It is respectfully requested that claims 1-3, 5, 8, and 27 be allowed.

The Examiner has rejected claim 28 under 35 U.S.C. 103(a) as being unpatentable over DeMayo in view of US Patent No. 6,302,887 issued to Spranza et al. The Spranza reference fails to cure the previously described deficiency of the DeMayo reference with respect to claim 26. Therefore, the combination of the DeMayo and Spranza references fails to teach all of the limitations of claim 26, from which claim 28 depends. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 28.

The Examiner has rejected claim 29 under 35 U.S.C. 103(a) as being unpatentable over DeMayo in view of US Publication No. 2003/0065333 to Smith et al. The Smith reference fails to cure the previously described deficiency of the DeMayo reference with respect to claim 26. Therefore, the combination of the DeMayo and Smith references fails to teach all of the limitations of claim 26, from which claim 29 depends. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 29.

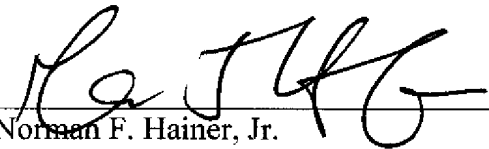
Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

The absence of an explicit response by the Applicants to any of the Examiners positions does not constitute a concession of the Examiners positions. The fact that Applicants comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Please apply any charges or credits to Deposit Account No. 192563.

Respectfully submitted,

Date: 8/30/07


Norman F. Hainer, Jr.
Reg. No. 55,239

Smith & Nephew, Inc.
150 Minuteman Road
Andover, MA 01810
Telephone: 978-749-1311
Facsimile: 978-684-6417